

CAUSE NO. **2012 28683**

FILED
Chris Daniel
District Clerk

MAY 16 2012

Time: _____
By: _____
Deputy

THE STATE OF TEXAS AND
THE CITY OF HOUSTON
Plaintiffs

IN THE DISTRICT COURT OF
HARRIS COUNTY, TEXAS

VS.

HARRIS COUNTY, TEXAS

D. HOUSTON, INC. D/B/A
TREASURES; AND THE
PREMISES LOCATED AT 5647
WESTHEIMER ROAD, HOUSTON,
HARRIS COUNTY, TEXAS IN REM
Defendants

164/4h

JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION FOR ABATEMENT OF COMMON AND PUBLIC NUISANCES,
APPLICATION FOR A PERMANENT INJUNCTION, AND REQUEST FOR DISCLOSURE**

TO THE HONORABLE JUDGE OF SAID COURT:

SHORT STATEMENT OF THE CASE

1. Harris County Attorney Vince Ryan and Houston City Attorney David Feldman bring this Original Petition on behalf of the State of Texas (State) and the City of Houston, Texas (City) plaintiff-petitioners (plaintiffs), to permanently enjoin and abate common and public nuisances¹ caused by Treasures.

2. The defendant business known as "D. Houston, Inc. d/b/a Treasures (Treasures) and the premises located at 5647 Westheimer Road, Houston, Harris County, Texas, In Rem (Defendants)" is a place where persons habitually go for the purpose of prostitution, promotion of prostitution, aggravated promotion of prostitution; for the unlawful possession, use, delivery, dispensation, or distribution of controlled substances or dangerous drugs; and for other common nuisance activities. Treasures knowingly tolerates the activity and fails to make reasonable attempts to abate these activities.

¹ Tex. Civ. Prac. & Rem. Code §§ 125.002(a), 125.0015, & 125.064.

3. Plaintiffs further aver that the owners, management, and employees of Treasures are engaged in gang² related organized criminal activities that constitute a public nuisance – as defined in Tex. Civ. Prac. & Rem. Code 125.061, and Tex. Penal Code §§ 71.01 & 71.02.

4. Treasures knowingly maintains a place where human trafficking regularly occurs, in violation of Tex. Civ. Prac. & Rem. Code § 125.0015(20). “Trafficking” means to transport, entice, recruit, harbor, provide, or otherwise obtain another person by any means. Tex. Penal Code § 20A.01(4). Treasures allows pimps to traffic their women inside Treasures. And, through force, fraud, or coercion pimps cause these women to engage in prostitution. Treasures knowingly receives a benefit from participating in the prostitution trafficking venture. In addition, a person (customer) who knowingly engages in sexual conduct with a trafficked person commits a second-degree felony. Tex. Penal Code § 20A.02(a)(4).

DISCOVERY CONTROL PLAN

5. The Plaintiffs move the Court to issue a docket control order under Tex. R. Civ. P 190.4, tailored to the circumstances of this specific suit, and setting the permanent injunction hearing as soon as practicable after a reasonable time for discovery.

STATUS OF THE PARTIES

6. The State of Texas, by and through Harris County Attorney Vince Ryan’s Office, with its principal office located at 1019 Congress, 15th Floor, Houston, Texas, is duly authorized under Tex. Civ. Prac. & Rem. Code § 125.002 to bring and prosecute this cause of action to enjoin and have abated those activities declared to be a common or public nuisance and to have the premises which occupy the real estate known by the street address at 5647 Westheimer Road, Houston, Harris County, Texas (“Premises”) closed and any other such relief to abate the

² “Criminal street gang” means three or more persons having . . . an identifiable leadership who continuously or regularly associate in the commission of criminal activities. Tex. Penal Code § 71.01(d).

nuisance. As provided by Tex. Civ. Prac. & Rem. Code § 6.001, the State of Texas is exempt from bond and court costs. Further, the State of Texas need not plead specific harm or inadequacy of legal remedy.

7. The City of Houston, a Texas home rule municipal corporation, with its principal office located at 900 Bagby, City Hall Annex, Houston, Texas, by and through the City Attorney, David M. Feldman, is duly authorized under Tex. Civ. Prac. & Rem. Code § 125.002 to bring and prosecute this cause of action to enjoin and have abated those activities declared to be a common or public nuisance and to have the Premises closed. As provided by the Charter of the City of Houston, Article IX, Section 8, no bond is required of the City of Houston. Further, the City of Houston need not plead specific harm or inadequacy of legal remedy.

8. Defendant D. Houston, Inc. is the operator of the Premises known as Treasures located at 5647 Westheimer Road, Houston, Harris County, Texas at all times material to this action. This Defendant may be served by serving its registered agent, Ronald Monshaugen, at 1225 North Loop West, Suite 640, Houston, Texas 77008.

9. The Premises (Treasures) at 5647 Westheimer Road, Houston, Harris County, Texas is operated as a common nuisance. Tex. Civ. Prac. & Rem. Code § 125.0015. Plaintiffs bring this suit *in rem* pursuant to Tex. Civ. Prac. & Rem. Code § 125.002(b). This *in rem* Defendant may be served by serving the owner of the Premises, Nabilco, Inc., by serving its registered agent, Ali Al Abssi, at 31 East Shady Lane, Houston, Texas 77063. Plaintiffs will also request, under separate motion, substituted service pursuant to Tex. R. Civ. P. Rule 109.

JURISDICTION AND VENUE

10. This Court has subject matter and personal jurisdiction under Tex. Civ. Prac. & Rem. Code §§ 125.002(a) & 125.064. Defendants are maintaining the property as a common

and public nuisance. Venue is proper.³ The real property at issue is located in Harris County, Texas.

STATEMENT OF FACTS

11. Defendants have knowingly allowed nuisance activity under Tex. Civ. Prac. & Rem. Code Chapter 125 -- including prostitution, narcotics, unlawfully carrying a weapon, aggravated assault, and aggravated robbery to habitually occur at Treasures. In the last four years, more than thirty (30) Chapter 125 crimes have occurred at Treasures. And, within the past 12 months, more than five gang related activities involving the combination have occurred at Treasures, which meets the definition of “continuously and regularly.” Tex. Civ. Prac. & Rem. Code § 125.061(2), § 125.062. “Gang Activity” means organized criminal activity under § 71.02 of the Tex. Penal Code, which includes promotion of prostitution, aggravated promotion of prostitution, and delivery of controlled substances. This frequency is prima facie evidence that the proprietor of Treasures knowingly permitted the acts. Tex. Civ. Prac. & Rem. Code § 125.069.

INCIDENT NO.	DATE	OFFENSE
056255212	5/3/12	Prostitution
052420312	4/26/12	Aggravated Promotion of Prostitution/Prostitution
052444512	4/26/12	Prostitution
052444912	4/26/12	Prostitution
052444812	4/26/12	Prostitution
052445112	4/26/12	Prostitution
052444412	4/26/12	Delivery of Controlled Substance
050596012	4/21/12	Delivery of Controlled Substance
052006612	4/20/12	Vice Investigation
049138812	4/19/12	Possession of Controlled Substance
049153512	4/18/12	Delivery of Controlled Substance
051176412	4/17/12	Narcotics Investigation
046273712	4/12/12	Delivery of Controlled Substance
017350912	2/9/12	Prostitution

³ Tex. Civ. Prac. & Rem. Code § 15.016 & § 125.002(a).

158349711	12/8/11	Prostitution
158150211	12/8/11	Prostitution
140188311	10/28/11	Prostitution
084681211	6/29/11	Prostitution
084698711	6/29/11	Unlawfully Carrying A Weapon
084686511	6/29/11	Prostitution
084685911	6/29/11	Prostitution
149057210	10/20/10	Prostitution
024430910	2/19/10	Delivery of a Controlled Substance
019798410	2/8/10	Delivery of a Controlled Substance
019482610	2/8/10	Prostitution
016670910	2/4/10	Prostitution
017607710	2/1/10	Prostitution/Possession of Marijuana
178178009	12/6/09	Possession of Marijuana
175152909	11/30/09	Aggravated Assault
132931109	9/10/09	Aggravated Assault
125914609	8/27/09	Prostitution
069350709	5/13/09	Prostitution
011839409	1/24/09	Aggravated Robbery
010233309	1/21/09	Aggravated Assault
005721609	1/12/09	Aggravated Assault
179269508	12/5/08	Prostitution
120641408	8/19/08	Aggravated Assault
030371708	2/29/08	Prostitution
018825408	2/8/08	Unlawfully Carrying A Weapon
005368008	1/11/08	Prostitution

COMMON NUISANCE

12. In keeping with Tex. Civ. Prac. & Rem. Code § 125.002(h), Plaintiffs have considered the failure of Defendants to promptly notify the appropriate law enforcement agency of the occurrence of such criminal acts at the Premises and to cooperate with law enforcement investigations of criminal acts on the Premises.

13. The general reputation of Treasures in the community will also show the existence of this common nuisance.⁴

⁴ Tex. Civ. Prac. & Rem. Code § 125.004(c).

14. The frequency of the violations described above is prima facie evidence that the defendants collectively and knowingly tolerated the prostitution, promotion of prostitution, and unlawful delivery, dispensation, or distribution of controlled substances or dangerous drugs.⁵

15. “[A] person who maintains a place to which persons habitually go . . . and who knowingly tolerates the activity and furthermore fails to make reasonable attempts to abate the activity maintains a common nuisance.”⁶ Treasures constitutes a common nuisance within the meaning of Tex. Civ. Prac. & Rem. Code § 125.001 et seq.

16. Statutory common nuisances are listed at Tex. Civ. Prac. & Rem. Code § 125.0015. Plaintiffs contend that Treasures violates the following:

- a. § 125.0015(a)(3) engaging in organized criminal activity – Penal Code § 71.02;
- b. § 125.0015(a)(4) delivery, possession, manufacture or use of a controlled substance in violation of Chapter 481, Health and Safety Code;
- c. § 125.0015(a)(6) prostitution, promotion of prostitution, or aggravated promotion of prostitution as prohibited by the Penal Code;
- d. § 125.0015(a)(7) compelling prostitution as prohibited by the Penal Code;
- e. § 125.0015(a)(9) aggravated assault as described by Section 22.02, Penal Code;
- f. § 125.0015(a)(13) aggravated robbery as described by Section 29.03, Penal Code.
- g. § 125.0015(a)(14) unlawfully carrying a weapon as described by Section 46.02, Penal Code;
- h. § 125.0015(a)(20) trafficking of persons as described by Section 20A.02, Penal Code;

⁵ *Id* at subsection (a).

⁶ Tex. Civ. Prac. & Rem. Code § 125.0015(a).

PUBLIC NUISANCE

17. Treasures maintains a façade of legitimacy to facilitate an organized “combination” of manager-employees, pimps, and prostitutes expressly prohibited under Tex. Civ. Prac. & Rem. Code § 125.063. “Combination” means three or more persons who collaborate in carrying on criminal activities”⁷ Treasures further fosters the use of its place of business to habitually allow the combination’s unlawful delivery, dispensation, or distribution of controlled substances or dangerous drugs.

18. Plaintiffs seek to enjoin and abate the public nuisance under Tex. Civ. Prac. & Rem. Code § 125.064.

REQUEST FOR PERMANENT INJUNCTIVE RELIEF

19. Treasures is knowingly maintained as an establishment where prostitution, promotion of prostitution; delivery, possession, manufacture and use of a controlled substances; engaging in organized criminal activity, and other crimes that constitute common and public nuisance under Chapter 125 of the Tex. Civ. Prac. & Rem. Code are committed. As such the property constitutes a public and common nuisance as defined by Sections 125.062, 125.063, and 125.0015(a) of the Tex. Civ. Prac. & Rem. Code.

20. Defendants have failed or refused to abate the nuisance. Defendants are likely to continue to maintain the property as a common and public nuisance unless restrained by an injunctive order of the Court or other such relief.

21. Unless the Court enjoins these defendants from maintaining the property as a common and public nuisance, the citizens of Houston and Harris County, Texas will suffer irreparable harm. The City and State have no other adequate remedy at law to prevent the continued maintenance of the property as a common and public nuisance.

⁷ Tex. Penal Code § 71.01.

22. The consequences of the above-described unlawful activities at the property, as well as the foreseeable resulting criminal activity associated with these acts, would proximately cause a person of ordinary sensibilities to be substantially frightened, discomforted, annoyed and inconvenienced in the use of any premises surrounding the property.

23. If final judgment favors the State, the Court shall grant a permanent injunction ordering Defendants, including the real property known as 5647 Westheimer Road, Houston, Harris County, Texas, to abate the nuisance and/or be forever enjoined from maintaining or participating in the common and public nuisance existing on the property. The Court may include in its order reasonable requirements to prevent the use or maintenance of the place as a nuisance.

24. Because Plaintiffs bring this action in rem, the final judgment shall be a judgment in rem, and must order that the place where the nuisance exists be closed for one year after the date of judgment or other such relief.⁸

25. A person who violates a temporary or permanent injunctive order is subject to the following sentences for civil contempt:⁹

- a. fine of not less than \$1,000 or more than \$10,000;
- b. confinement in jail for a term of not less than 10 or more than 30 days;
- c. both a fine and confinement.

ATTORNEY'S FEES

26. In order to litigate this case, it was necessary to secure the services of the undersigned attorneys. Plaintiffs request that Defendants be adjudged jointly and severally liable

⁸ Tex. Civ. Prac. & Rem. Code § 125.002(e).

⁹ Tex. Civ. Prac. & Rem. Code § 125.002(d).

for Plaintiffs' reasonable attorneys' fees, investigative costs, witness fees, court costs, and any other reasonable expenses incurred in bringing this lawsuit.¹⁰

INITIAL DISCLOSURES


27. Pursuant to Texas Rule of Civil Procedure 194, Plaintiffs request that Defendants disclose, within 50 days of service of this request, the information or material described in Rule 194.2.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that the Court grant judgment in favor of Plaintiffs for a permanent injunction and other such relief; and issue a judgment *in rem* against the Premises closing it for one year. Further, Plaintiffs pray for their costs of court, reasonable attorney's fees, investigative costs, witness fees, any other reasonable expenses and for such other and further relief to which they may be justly entitled.

Respectfully submitted,

VINCE RYAN
Harris County Attorney

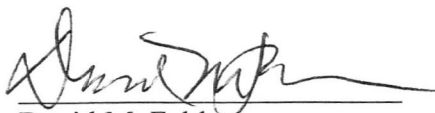


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¹⁰ Tex. Civ. Prac. & Rem. Code §§ 125.003 (d) and 125.068.

DAVID M. FELDMAN
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A handwritten signature in black ink, appearing to read 'David M. Feldman', written over a horizontal line.

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